

File No. 608

(Reprint of File No. 388)

Substitute Senate Bill No. 610
As Amended by House Amendment
Schedule "A"

Approved by the Legislative Commissioner
April 24, 1998

AN ACT CONCERNING COMPETENCY TO STAND TRIAL.

Be it enacted by the Senate and House of
Representatives in General Assembly convened:

1 Section 1. Subsection (k) of section 54-56d
2 of the general statutes is repealed and the
3 following is substituted in lieu thereof:
4 (k) (1) When any placement order for
5 treatment is rendered or continued, the court
6 shall set a date for a hearing, to be held within
7 ninety days, for reconsideration of the issue of
8 the defendant's competency. Whenever the court
9 receives a report pursuant to subsection (j) which
10 indicates [either] that [(1)] (A) the defendant
11 has attained competency, [or that (2)] (B) the
12 defendant will not attain competency within the
13 remainder of the period covered by the placement
14 order OR (C) THE DEFENDANT WILL NOT ATTAIN
15 COMPETENCY WITHIN THE REMAINDER OF THE PERIOD
16 COVERED BY THE PLACEMENT ORDER ABSENT
17 ADMINISTRATION OF PSYCHIATRIC MEDICATION FOR WHICH
18 THE DEFENDANT IS UNWILLING OR UNABLE TO PROVIDE
19 CONSENT, the court shall set the matter for a
20 hearing no later than ten days after the report is
21 received. The hearing may be waived by the
22 defendant only if the report indicates that he is

23 competent. The court shall determine whether the
24 defendant is competent or whether he is making
25 progress toward attainment of competency within
26 the period covered by the placement order. If the
27 court finds that the defendant is competent, he
28 shall be returned to the custody of the
29 Commissioner of Correction or released, if he has
30 met the conditions for release, and the court
31 shall continue with the criminal proceedings. If
32 the court finds that the defendant is still not
33 competent but that he is making progress toward
34 attaining [competence] COMPETENCY, it may continue
35 or modify the placement order. IF THE COURT FINDS
36 THAT THE DEFENDANT IS STILL NOT COMPETENT AND WILL
37 NOT ATTAIN COMPETENCY WITHIN THE REMAINDER OF THE
38 PERIOD COVERED BY THE PLACEMENT ORDER ABSENT
39 ADMINISTRATION OF PSYCHIATRIC MEDICATION FOR WHICH
40 HE IS UNWILLING OR UNABLE TO PROVIDE CONSENT, IT
41 SHALL PROCEED AS PROVIDED IN SUBDIVISIONS (2) AND
42 (3) OF THIS SUBSECTION.

43 (2) IF THE COURT FINDS THAT THE DEFENDANT WILL
44 NOT ATTAIN COMPETENCY WITHIN THE REMAINDER OF THE
45 PERIOD COVERED BY THE PLACEMENT ORDER ABSENT
46 ADMINISTRATION OF PSYCHIATRIC MEDICATION FOR WHICH
47 THE DEFENDANT IS UNWILLING OR UNABLE TO PROVIDE
48 CONSENT, AND AFTER ANY HEARING HELD PURSUANT TO
49 SUBDIVISION (3) OF THIS SUBSECTION, IT MAY ORDER
50 THE INVOLUNTARY MEDICATION OF THE DEFENDANT IF IT
51 FINDS BY CLEAR AND CONVINCING EVIDENCE THAT: (A)
52 TO A REASONABLE DEGREE OF MEDICAL CERTAINTY
53 INVOLUNTARY MEDICATION OF THE DEFENDANT WILL
54 RENDER HIM COMPETENT TO STAND TRIAL, (B) AN
55 ADJUDICATION OF GUILT OR INNOCENCE CANNOT BE HAD
56 USING LESS INTRUSIVE MEANS, (C) THE PROPOSED
57 TREATMENT PLAN IS NARROWLY TAILORED TO MINIMIZE
58 INTRUSION ON THE DEFENDANT'S LIBERTY AND PRIVACY
59 INTERESTS, (D) THE PROPOSED DRUG REGIME WILL NOT
60 CAUSE AN UNNECESSARY RISK TO THE DEFENDANT'S
61 HEALTH AND (E) THE SERIOUSNESS OF THE ALLEGED
62 CRIME IS SUCH THAT THE CRIMINAL LAW ENFORCEMENT
63 INTEREST OF THE STATE IN FAIRLY AND ACCURATELY
64 DETERMINING THE DEFENDANT'S GUILT OR INNOCENCE
65 OVERRIDES THE DEFENDANT'S INTEREST IN
66 SELF-DETERMINATION.

67 (3) IF THE COURT FINDS THAT THE DEFENDANT IS
68 UNABLE TO PROVIDE CONSENT FOR THE ADMINISTRATION
69 OF PSYCHIATRIC MEDICATION, AND PRIOR TO DECIDING
70 WHETHER TO ORDER THE INVOLUNTARY MEDICATION OF THE

71 DEFENDANT UNDER SUBDIVISION (2) OF THIS
72 SUBSECTION, THE COURT SHALL APPOINT A LICENSED
73 HEALTH CARE PROVIDER WITH SPECIALIZED TRAINING IN
74 THE TREATMENT OF PERSONS WITH PSYCHIATRIC
75 DISABILITIES TO REPRESENT THE HEALTH CARE
76 INTERESTS OF THE DEFENDANT BEFORE THE COURT.
77 NOTWITHSTANDING THE PROVISIONS OF SECTION 52-146e,
78 SUCH PERSON SHALL HAVE ACCESS TO THE PSYCHIATRIC
79 RECORDS OF THE DEFENDANT. SUCH PERSON SHALL FILE A
80 REPORT WITH THE COURT NOT LATER THAN THIRTY DAYS
81 AFTER HIS OR HER APPOINTMENT. THE REPORT SHALL SET
82 FORTH SUCH PERSON'S FINDINGS AND RECOMMENDATIONS
83 CONCERNING THE ADMINISTRATION OF PSYCHIATRIC
84 MEDICATION TO THE DEFENDANT INCLUDING THE RISKS
85 AND BENEFITS OF SUCH MEDICATION, THE LIKELIHOOD
86 AND SERIOUSNESS OF ANY ADVERSE SIDE EFFECTS AND
87 THE PROGNOSIS WITH AND WITHOUT SUCH MEDICATION.
88 THE COURT SHALL HOLD A HEARING ON THE MATTER NOT
89 LATER THAN TEN DAYS AFTER RECEIPT OF SUCH PERSON'S
90 REPORT AND SHALL, IN DECIDING WHETHER TO ORDER THE
91 INVOLUNTARY MEDICATION OF THE DEFENDANT, TAKE INTO
92 ACCOUNT SUCH PERSON'S OPINION CONCERNING THE
93 HEALTH CARE INTERESTS OF THE DEFENDANT.

94 Sec. 2. Subsection (m) of section 54-56d of
95 the general statutes is repealed and the following
96 is substituted in lieu thereof:

97 (m) If at any time the court determines that
98 there is not a substantial probability that the
99 defendant will [become competent] ATTAIN
100 COMPETENCY within the period of treatment allowed
101 by this section, or if at the end of that period
102 the court finds that the defendant is still not
103 competent, the court shall either release the
104 defendant from custody or order the defendant
105 placed in the custody of the Commissioner of
106 Mental Health and Addiction Services, the
107 Commissioner of Children and Families or the
108 Commissioner of Mental Retardation. The
109 commissioner given custody or his designee shall
110 then apply for civil commitment according to
111 sections 17a-75 to 17a-83, inclusive, 17a-270 to
112 17a-283, inclusive, and 17a-495 to 17a-528,
113 inclusive, AS AMENDED. The court shall hear
114 arguments as to whether the defendant should be
115 released or should be placed in the custody of the
116 Commissioner of Mental Health and Addiction
117 Services, the Commissioner of Children and
118 Families or the Commissioner of Mental

119 Retardation. IF THE COURT ORDERS THE RELEASE OF A
120 DEFENDANT CHARGED WITH THE COMMISSION OF A CRIME
121 THAT RESULTED IN THE DEATH OR SERIOUS PHYSICAL
122 INJURY, AS DEFINED IN SECTION 53a-3, OF ANOTHER
123 PERSON, IT MAY, ON ITS OWN MOTION OR ON MOTION OF
124 THE PROSECUTING AUTHORITY, ORDER, AS A CONDITION
125 OF SUCH RELEASE, PERIODIC EXAMINATIONS OF THE
126 DEFENDANT AS TO HIS COMPETENCY. SUCH AN
127 EXAMINATION SHALL BE CONDUCTED IN ACCORDANCE WITH
128 SUBSECTION (d) OF THIS SECTION. UPON RECEIPT OF
129 THE WRITTEN REPORT AS PROVIDED IN SAID SUBSECTION
130 (d) THE COURT SHALL, UPON THE REQUEST OF EITHER
131 PARTY FILED NOT LATER THAN THIRTY DAYS AFTER THE
132 COURT RECEIVES SUCH REPORT, CONDUCT A HEARING AS
133 PROVIDED IN SUBSECTION (e) OF THIS SECTION. SUCH
134 HEARING SHALL BE HELD NOT LATER THAN NINETY DAYS
135 AFTER THE COURT RECEIVES SUCH REPORT. IF THE COURT
136 FINDS THAT THE DEFENDANT HAS ATTAINED COMPETENCY,
137 HE SHALL BE RETURNED TO THE CUSTODY OF THE
138 COMMISSIONER OF CORRECTION OR RELEASED, IF HE HAS
139 MET THE CONDITIONS FOR RELEASE, AND THE COURT
140 SHALL CONTINUE WITH THE CRIMINAL PROCEEDINGS.
141 PERIODIC EXAMINATIONS ORDERED BY THE COURT UNDER
142 THIS SUBSECTION SHALL CONTINUE UNTIL THE COURT
143 FINDS THAT THE DEFENDANT HAS ATTAINED COMPETENCY
144 OR UNTIL THE TIME WITHIN WHICH THE DEFENDANT MAY
145 BE PROSECUTED FOR THE CRIME WITH WHICH HE IS
146 CHARGED, AS PROVIDED IN SECTION 54-193 OR 54-193a,
147 HAS EXPIRED, WHICHEVER OCCURS FIRST. The court
148 shall dismiss, with or without prejudice, any
149 charges for which a nolle prosequi is not entered
150 when the time within which the defendant may be
151 prosecuted for the crime with which he is charged,
152 as provided in section 54-193 OR 54-193a, has
153 expired. Notwithstanding the erasure provisions of
154 section 54-142a, police and court records and
155 records of any state's attorney pertaining to a
156 charge which is nolle or dismissed without
157 prejudice while the defendant is not competent
158 shall not be erased until the time for the
159 prosecution of the defendant expires under section
160 54-193 OR 54-193a. A defendant who is not civilly
161 committed as a result of an application made by
162 the Commissioner of Mental Health and Addiction
163 Services, the Commissioner of Children and
164 Families or the Commissioner of Mental Retardation
165 pursuant to this section shall be released. A
166 defendant who is civilly committed pursuant to

167 such an application shall be treated in the same
168 manner as any other civilly committed person.

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"THE FOLLOWING FISCAL IMPACT STATEMENT AND BILL ANALYSIS ARE PREPARED FOR THE BENEFIT OF MEMBERS OF THE GENERAL ASSEMBLY, SOLELY FOR PURPOSES OF INFORMATION, SUMMARIZATION AND EXPLANATION AND DO NOT REPRESENT THE INTENT OF THE GENERAL ASSEMBLY OR EITHER HOUSE THEREOF FOR ANY PURPOSE."

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FISCAL IMPACT STATEMENT - BILL NUMBER SSB 610

STATE IMPACT See Explanation Below

MUNICIPAL IMPACT None

STATE AGENCY(S) Judicial Department, Department of
 Mental Health and Addiction
 Services, Criminal Justice
 Agencies

EXPLANATION OF ESTIMATES:

The bill's provisions concerning involuntary medication would result in savings to the Judicial Department. Since these provisions codify the State v. Garcia Supreme Court decision, there would not be a fiscal impact. However, to the extent that the bill clarifies procedures for the courts to follow, case timeframes would be reduced in some cases, thereby freeing up resources for other cases.

The bill's provisions concerning periodic competency examinations would result in additional pressure on the criminal justice system to the extent that individuals are found to require further community supervision or incarceration. These pressures, in conjunction with other penalties, could lead to a need for additional resources in the future. It should be noted that SHB 5021 (the revised Appropriations Act for FY 1998-99 as favorably reported by Appropriations) includes \$5.4 million to address overcrowding in the state's prisons and jails. In addition, the Public Defender Services Commission is currently under suit by the American Civil Liberties Union relating to the inadequacy of funding for public defenders.

This bill may result in net savings for the Department of Mental Health and Addiction Services (DMHAS). The department will realize higher pharmaceutical costs from court mandated medication of those found not competent to stand trial. However, if these individuals attain competency sooner due to this medication, they will be transferred back to the judicial system, thus resulting in saving for DMHAS through reduced costs related to ongoing treatment. It is anticipated that these savings will more than offset the increased medication costs.

House "A" made certain changes in the procedure involving involuntary medication, but did not alter the fiscal impact of the original bill.

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OLR AMENDED BILL ANALYSIS

sSB 610 (as amended by House "A")*

AN ACT CONCERNING COMPETENCY TO STAND TRIAL

SUMMARY: This bill changes the law on competency to stand trial by:

1. authorizing the court to order the involuntary medication of criminal defendants who are not competent to stand trial but who could attain competency with such medication;
2. requiring courts to appoint a health care provider for such defendants who are unable to consent to treatment with psychiatric medication; and
3. requiring courts to hold a hearing to reconsider a defendant's competency within 10 days after receiving a report that the defendant will not attain competency within the remainder of any court-ordered placement without the administration of psychiatric medication that he is unwilling or unable to consent to take.

The bill also authorizes courts to order periodic examinations for defendants who, after being charged

with killing or seriously injuring another person, are released from custody because they are not competent to stand trial.

It requires the court to dismiss charges of child sexual assault against defendants who do not attain competency within the statute of limitation specified in law.

*House Amendment "A" changes "health care guardians" to "health care provider," requires the provider to have special training, requires courts to appoint the provider before ordering a defendant involuntarily medicated, specifies the contents of the provider's report to the court, requires the court to consider the provider's opinion before ordering medication, and requires the court to hold a hearing before issuing the order if a provider is appointed.

EFFECTIVE DATE: October 1, 1998

FURTHER EXPLANATION

Forced Medication

The bill authorizes the court to have defendants involuntarily medicated when they have been found not competent to stand trial and will not attain competency during any period of court-ordered treatment without psychiatric medication that they refuse or cannot consent to take. Before issuing the order, the court must conduct a hearing if a health care provider has been appointed to represent the defendant's medical interests. It must find, by clear and convincing evidence, that:

1. to a reasonable degree of medical certainty, involuntary medication will render the defendant competent to stand trial;
2. it cannot make an adjudication of guilt or innocence by less intrusive means;
3. the proposed treatment plan is narrowly tailored to minimize the intrusion on the defendant's liberty and privacy;
4. the proposed drug regime will not cause an

unnecessary risk to the defendant's health;
and

5. the charges against the defendant are so serious that the state's criminal law enforcement interests in fairly and accurately determining his guilt or innocence override his interest in self-determination.

Health Care Providers

Before deciding whether to have a defendant who is unable to consent to treatment involuntarily medicated, the bill requires the court to appoint a health care provider to represent the defendant's health care interests. The health care provider must have specialized training in the treatment of people with psychiatric disabilities. The provider must report his findings to the court within 30 days of his appointment.

The report must set forth the provider's findings and recommendations concerning the:

1. administration of psychiatric medication to the defendant, including the risks and benefits of such medication;
2. likelihood and seriousness of any adverse side effects; and
3. prognosis with and without such medication.

The court must schedule a hearing no later than 10 days after the report is received and take into consideration the health care provider's opinion regarding the defendant's health care interests before ordering him medicated. The bill provides that the law on psychiatrist-patient privilege cannot be asserted to deny health care providers access to the defendant's psychiatric records.

Periodic Examinations

The law allows the court to release from custody defendants it finds will not achieve competency to stand trial. The bill authorizes the court, on its own motion or that of a prosecutor, to order periodic

competency examinations as a condition of release for defendants who are charged with killing or seriously injuring another person. As with examinations conducted during court-ordered placement, court-appointed psychiatrists or the Department of Mental Health and Addiction Services (DMHAS) commissioner conducts the periodic examinations. The examiners must complete the examination within 15 days after the date it is ordered and report to the court within six days thereafter.

Once the court receives the report, the parties have 30 days to request a hearing. And the court must conduct one, if at all, within 90 days after receipt. If the court finds that the defendant has attained competency, it must continue with the criminal proceedings and either return the defendant to the custody of commissioner of correction or release him if he has met the conditions of release.

The bill provides that court-ordered periodic examinations must continue until the court finds that the defendant has attained competency or the statute of limitation for prosecuting the offense has expired, whichever occurs first.

BACKGROUND

Competency to Stand Trial

By law, a court can order treatment for a defendant it finds incompetent to stand trial if treatment will render him competent. Treatment may be conducted on an inpatient or outpatient basis and may last for 18 months or the maximum possible sentence the defendant faces, whichever is less. The people providing treatment must provide the court with status reports on the defendant. Once the court receives these reports, it must schedule a hearing to reconsider the defendant's competency.

If the court at a final competency hearing finds that the defendant is not competent or will not likely become competent, it must release him or place him in the custody of the DMHAS commissioner for civil commitment. After the statute of limitation for prosecuting the defendant expires, the court must dismiss the charges.

Limitation of Prosecutions

There is no time limit on prosecuting a person for a capital felony, class A felony (such as first-degree kidnapping and first-degree arson), and arson-murder. All other felonies must be prosecuted within five years. All other offenses must be prosecuted within one year. But sexual abuse, sexual exploitation, or sexual assault of a minor must be prosecuted within two years after the minor reaches age 18 or within five years after the victim notifies the police or prosecutor of the offense, whichever is earlier, but in no event less than five years after the crime is committed.

Related Case Law

In State v. Garcia, 233 Conn. 44 (1995), the state Supreme Court held that there are some circumstances under which a court may authorize the involuntary medication of a defendant in order to render him competent. The criteria the court established for determining when these circumstances exist are the same as those required in the bill.

In State v. Curtis, 22 Conn. App. 199 (1990), the Appellate Court held that a trial court lacked statutory authority to order a defendant found incompetent to stand trial and unlikely to regain competency if treated to submit to annual competency examinations as a condition of release.

COMMITTEE ACTION

Judiciary Committee

Joint Favorable Substitute
Yea 37 Nay 0